

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GC2 INCORPORATED,

Plaintiff,

vs.

INTERNATIONAL GAME TECHNOLOGY PLC,
et al.,

Defendant.

Docket No. 16 C 8794

Chicago, Illinois
December 21, 2017
10:25 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - MOTION
BEFORE THE HONORABLE MATTHEW F. KENNELLY

APPEARANCES:

For the Plaintiff:

GREENSFELDER, HEMKER & GALE, P.C.
BY: MR. RYAN J. YAGER
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For the Defendants:

NOVACK & MACEY, LLP
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Court Reporter:

MS. CAROLYN R. COX, CSR, RPR, CRR, FCRR
Official Court Reporter
219 S. Dearborn Street, Suite 2102
Chicago, Illinois 60604
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1 (The following proceedings were had in open court:)

2 THE CLERK: Case No. 16 C 8794, GC2 Incorporated v.
3 International Game.

4 MR. YAGER: Good morning, your Honor. Ryan Yager for
5 the plaintiffs.

6 THE COURT: Say it again? I'm sorry.

7 MR. YAGER: Ryan Yager for the plaintiff.

8 MR. LIEBMAN: Good morning, your Honor. Josh Liebman
9 on behalf of the defendants.

10 THE COURT: Okay. So I actually want to talk first
11 about the second thing that got filed, which is the motion on
12 the number of depositions. So one of the things that's
13 referenced in the motion is the number of people identified in
14 the 26(a)(1) disclosures by the various defendants.

15 So have you done sort of a grand total? Or can you
16 give me a ballpark grand total?

17 MR. YAGER: I want to say it's about 22.

18 THE COURT: Okay. And are the -- this is a really
19 important question, so answer it carefully. Are the 26(a)(1)
20 disclosures good enough -- in other words, compliant with the
21 rule -- that they can allow you to identify who you really
22 need to depose?

23 MR. YAGER: No.

24 THE COURT: Then why haven't you been in here telling
25 me they aren't good enough?

1 Basically, the scenario here is you basically have
2 told me, well, there's this huge number of witnesses that have
3 been identified. We can't be limited to 10 depositions. I
4 mean, the general level, I get that, but then the obvious
5 question is -- I mean, so if the 26(a)(1) disclosures were
6 good and compliant and they said it's pretty clear that the
7 defendants really have all of these 20-however-many people
8 that they are going to call as witnesses, I would say, that's
9 kind of a no-brainer. You get to depose all those people.

10 If the answer is, we are having to kind of pick
11 through and figure out who to depose because the 26(a)s aren't
12 good enough, then the question is like, where have you been?
13 Because the 26(a)s were served months and months ago, right?
14 A long time ago. I think I had you supplement them back in
15 July after I had ruled on the motions to dismiss.

16 So what about that?

17 MR. YAGER: Well, I would say we have asked the
18 defendants to supplement their initial disclosures multiple
19 times, and we've -- both parties basically agreed to
20 supplement at a reasonable time, and that was after discovery.

21 But beyond that, we have -- you know, we took a
22 deposition of one of the individuals, Ms. Domeeno (phonetic),
23 identified by the defendants. We asked her about the initial
24 disclosure, and she had no idea what was even said in those
25 initial disclosures about her.

1 THE COURT: Well, you wouldn't expect her to, though.
2 I mean --

3 MR. YAGER: Right.

4 THE COURT: -- those things aren't getting vetted by
5 every witness that's named.

6 MR. YAGER: Sure. But she didn't have any of the
7 knowledge that they identified that she had had, so we didn't
8 really know it was as big of an issue as it was until, you
9 know, November. Since then, we've tried to identify -- you
10 know, we've tried to be reasonable about which witnesses we
11 want to depose, we've identified them with particularity
12 except for the few additional ones beyond the 14 that we are
13 requesting.

14 And, you know, so I think we've made an effort to
15 pull through that and find the relevant witnesses and then
16 rely on basically what these individuals are saying during the
17 depositions to identify who, in fact, are the relevant
18 witnesses.

19 THE COURT: So what you're asking for -- so if I give
20 you what you ask for, what is the total number -- putting
21 aside experts, because I think that's a separate matter, so
22 how many depositions will you end up taking? How many fact
23 depositions?

24 MR. YAGER: Yes. So putting aside the experts, we
25 are --

1 THE COURT: And if you count each 30(b)(6) as one.

2 MR. YAGER: Right.

3 Fourteen. And I want to put one little caveat on
4 this, if I can, and that is, again, a lot of -- during the
5 depositions, a lot of the witnesses are sort of -- there's a
6 lot of finger-pointing intracompany between these defendants.
7 I mean, you saw the org chart the last time we were before
8 you.

9 And so I think our problem is we get into a
10 deposition and they say, well, yeah, I'm the chief of
11 marketing, but X person did it, not me.

12 So the depositions are enlightening in a lot of ways
13 into -- as to who has the actual relevant information. We're
14 trying to take who we think is relevant. When we're there,
15 we're finding more relevant people.

16 So we would ask for the 14, we would ask for at
17 least --

18 THE COURT: Not 10 plus 14.

19 MR. YAGER: Not 10 plus 14.

20 THE COURT: Fourteen.

21 MR. YAGER: Fourteen total, we would ask for leave.
22 Plus, we asked for leave to, you know, come to the Court via
23 motion with a particularized need at least if we find out --

24 THE COURT: Well, I'm not giving you any blank checks
25 in advance. We can talk about that in a second .

1 So what you're asking for is an -- you're asking me
2 to say that expert depositions don't count against the 10 and
3 give us four?

4 MR. YAGER: Correct.

5 THE COURT: Four extra ones, in other words.

6 MR. YAGER: Four extra.

7 THE COURT: Extra fact depositions.

8 MR. YAGER: Correct.

9 THE COURT: Okay. So how do you get to 25 to 30 in
10 your response here?

11 MR. LIEBMAN: Well, in the motion, your Honor, they
12 don't limit themselves to 14. They say, we've noticed nine --
13 they say, we've taken five, we've noticed nine more, so
14 that's 14, and we may need more. We don't know how many more.

15 And in our meet-and-confers, we intended to work this
16 issue out, but plaintiff would never tell us definitively what
17 their number was, how many depositions they needed, so it was
18 impossible to agree on anything.

19 We think the rule -- you know, the rule is 10, as
20 your Honor knows, and sometimes --

21 THE COURT: Yeah, the rule is a default rule which is
22 made -- which is the same rule for a slip-and-fall case in
23 which there are no witnesses other than the plaintiff and a
24 complicated commercial case, and that's why the rule allows
25 modification. Okay? And this is closer to the complicated

1 case end than the one-witness slip-and-fall case. Wouldn't
2 you agree with that?

3 MR. LIEBMAN: Your Honor, I completely agree with
4 that, your Honor. This is definitely a significantly more
5 complicated case than a slip-and-fall case, and there are a
6 lot of witnesses, and there are four defendants.

7 However, this case is not as complicated and as broad
8 and cumbersome as plaintiff has made it out to be and --

9 THE COURT: I don't want to start talking about how
10 many pages of motions to dismiss you guys filed. If it's all
11 that simple, I am not sure why I got all that stuff.

12 So here's the deal. I am going to give you the extra
13 four. I am not going to count the expert depositions against
14 the number. I am going to give you the extra four. I am not
15 going to give you a blank check or anything close to a blank
16 check to what happens after that.

17 I am not going to bar you from filing another motion,
18 but this is what you need to understand, so, again, listen
19 carefully. So the purpose of having limits on the number of
20 depositions is not to say, okay -- let's say we're talking
21 about 10 -- not to say, you know, I take nine depositions, and
22 then I say -- come in and say, I need another 10, Judge. Why
23 do you need another 10? Well, because these nine people
24 didn't know anything, and the really important people are the
25 other 10.

1 The idea is you're supposed to kind of understand
2 that you have limits, kind of like page limits on briefs,
3 understand that you have limits and do the more important
4 stuff when you're sure you can get it.

5 So if and when you come in and ask me for more, one
6 of the questions I am going to have is, okay, so why didn't
7 you put this person at the front of the line or somewhere in
8 the middle of the line rather than at the back of the line.

9 MR. YAGER: Understood.

10 THE COURT: You have been given your Miranda warnings
11 now.

12 MR. YAGER: Sure.

13 THE COURT: So the motion for leave to exceed the 10
14 deposition limit is granted to the extent stated in open
15 court. Plaintiff can have a total of 14 fact depositions.
16 And just so it's clear, I'm not going to put this in the
17 order, I am counting each 30(b)(6) as one.

18 All right. Now we are on to the 30(b)(6) stuff. So
19 I got all the stuff I need to have on that. I may have a
20 question or two, but sadly for the rest of the people in the
21 courtroom, I got to just kind of plow my way through it here,
22 so give me a second to pull it up on my screen.

23 There we go.

24 All right. So the first issue -- putting aside the
25 deadline issue, the first issue is the topics that either do

1 or don't ask for legal conclusions. The topic is acts of
2 infringement, and then I think the other one had something to
3 do with -- yeah, they both refer to acts of infringement.

4 Okay. So I think both sides have some valid points
5 here. I don't think that -- I mean, the term "infringement"
6 is -- it's not a purely legal conclusion, but it's a legal
7 conclusion that -- it's an application of law and facts. But
8 imbedded within it are a bunch of factual things. So when
9 we're talking about non-derivative works, it's like, did you
10 copy it, how did you copy it, how did you develop it.
11 Derivative works, same deal.

12 So it seems to me that the factual components of the
13 infringement conclusion are appropriate topics for a 30(b)(6)
14 deposition, but the ultimate conclusion of was this an
15 infringement isn't. And so, I mean, I kind of get the sense
16 that both sides kind of get that. I'm not sure that your
17 dispute is as much as you think it is, but that's the best I
18 can do to resolve it.

19 I'm doing these in the sequence in which they're
20 covered in the defendants' response, just so you know.

21 So the next one I've got here is 16, which has to do
22 with representations to the public and its terms of use, and
23 the issue has to do with representations to the public. I
24 think the defendant has the better of that argument, so I'm
25 ruling in the defendants' favor on that one.

1 No. 19 has to do with identifications of agreements
2 with others for other types of slot games. And it's kind of a
3 mixed bag on this one. So the plaintiff is basically saying,
4 well, we need to know how the defendant has dealt with similar
5 issues with others because it helps us determine what a
6 reasonable royalty is. I'm probably oversimplifying that, but
7 that's the takeaway I got from it.

8 The defendant basically says, there's like 90 other
9 agreements or 70 or some very large number. It's completely
10 ridiculous to have to produce all of those. I think you're
11 both right.

12 And so what you ought to be doing here is trying to
13 come up with some sort of a way of getting some sort of a
14 sample of other agreements so that the plaintiff can make the
15 type of comparisons they're talking about. I am going to say
16 it shouldn't be more than 10, and I'll leave it to you to kind
17 of figure out a way of doing that because anything I would do
18 would be completely arbitrary.

19 Next one is --

20 MR. LIEBMAN: Your Honor, is this limited to
21 agreements that the 30(b)(6) party has entered into, as
22 opposed to --

23 THE COURT: Well, I'm looking at topic No. 19, which
24 says, Identifications of agreements and terms of agreements
25 IGT NV has with others, so I think it's limited to whatever is

1 said in the particular --

2 MR. YAGER: Right. I think you're --

3 MR. LIEBMAN: Okay. I'm sorry.

4 THE COURT: I'm talking about a total of 10. Cross
5 off however many people we are talking about here.

6 Next one is No. 20. I agree that that seeks opinion
7 testimony, so I'm finding in the defendants' favor on that.

8 7 and 8 kind of seem like they relate to the one that
9 I was just talking about --

10 MR. YAGER: Right.

11 THE COURT: -- so I don't think I need -- relate
12 to 19, in other words. I don't think I need to say anything
13 more on that.

14 MR. YAGER: I think that's where the difference
15 between the party -- you know, they want to limit it to IGT NV
16 as the corporate rep. We're saying when you depose witnesses
17 in this case, when you talk with people who have knowledge of
18 these companies, they don't make these entity distinctions
19 like defense counsel do --

20 THE COURT: The answer is you haven't persuaded me
21 yet, so there you go. When I say "you," I mean the plaintiff.

22 And then the number of hours, it's 10. Okay? I
23 split the baby, not necessarily in the middle. You get 10.
24 That doesn't mean all in one day, because that would be
25 unthinkable.

1 In terms of the deadline -- so I think the other
2 thing was the deadline for amending the pleadings. It needs
3 to be before the fact discovery cutoff date, at least in my
4 view, and I always set them before the fact discovery cutoff
5 date. And the reason why I do that is that if you add a
6 party, then there's more fact discovery. If you make it
7 after, it's a whole mess.

8 So I don't have a problem -- I don't have a problem
9 bumping it a couple of weeks, but that's all you are going to
10 get.

11 So the deadline for amending the pleadings and adding
12 parties is moved to the 31st of January.

13 I think I've now ruled on everything. So the thing
14 on the motion to compel is going to say it's granted in part
15 and denied in part as stated in open court. You will just
16 have to order the transcript.

17 Anything else anybody can think of that I missed?

18 MR. YAGER: I don't think so.

19 MR. LIEBMAN: Your Honor, we filed a motion for
20 protective order last night. It's not noticed until next
21 week.

22 THE COURT: Then I'll see you next week. What date
23 did you --

24 MR. YAGER: Well, it's January 2nd.

25 THE COURT: I am not holding court then. One of the

1 wonderful things about CM/ECF is it allows the filer to
2 disregard the little pop-up that says the judge ain't holding
3 court on that date.

4 So you are going to have to renote it. I am not
5 holding court the 2nd or 3rd.

6 MR. LIEBMAN: Got it, your Honor. We will renote
7 it. Thank you very much.

8 (Which were all the proceedings had in the above-entitled
9 cause on the day and date aforesaid.)

10 I certify that the foregoing is a correct transcript from
11 the record of proceedings in the above-entitled matter.

12 _____
Carolyn R. Cox
13 Official Court Reporter
Northern District of Illinois

Date

14 /s/Carolyn R. Cox, CSR, RPR, CRR, FCRR
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